



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item A, June 28, 2006
Water Resources Commission Meeting

I. Issue Statement

The Water Resources Commission is asked to concur with a settlement agreement (Attachment 1) to resolve the court case associated with the Coos Bay North Bend Water Board water right application S-70256. Additionally, the Commission is asked to issue a revised final order (Attachment 2) which is similar to the final order (Attachment 3) and water right permit (Attachment 4) issued to the Coos Bay North Bend Water Board by the Commission in January 2001. The draft revised final order and draft water right permit are consistent with the settlement agreement. The parties to this case support the settlement agreement, draft revised final order, and draft water right permit. The settlement agreement, draft revised final order, and draft water right permit are attached.

II. Background

The Coos Bay North Bend Water Board filed water right application S-70256 for municipal use in March 1990. After considerable review and modification, the Department issued a proposed final order approving the application, as modified, in December 1997.

The City of Lakeside and WaterWatch, together with other environmental groups, protested the proposed final order, alleging that issuance of a permit in the form proposed by the Department would not be in the public interest. More specifically, the protestants alleged that the use of water under the proposed water right would harm fish, wildlife and scenic values. Additionally they contended water would not be put to beneficial use within the time frame as required by water right statutes.

A contested case hearing was conducted to receive testimony on the matter. At the conclusion of the contested case process, the hearings officer issued a proposed order. WaterWatch, the City of Lakeside and Coos Bay North Bend Water Board filed exceptions to the proposed order with the Commission. In December 2000, the Commission considered the exceptions and ruled unanimously to deny the exceptions and issue the final order and permit substantially similar to the proposed order and permit proposed by the Hearing Officer. Nancy Leonard, Chair of the Commission at the time, signed a final order in January 2001 (Attachment 3).

A petition for Judicial Review was filed with the Oregon Court of Appeals by WaterWatch in March 2001. The Court of Appeals reversed and remanded the matter to the Commission in April 2004. In July 2004, Coos Bay North Bend and the Department and Commission filed petitions for review with the Oregon Supreme Court.

The ruling of the Oregon Court of Appeals resulted in the introduction and passage of House Bill (HB) 3038 by the 2005 Legislative Assembly. However, it was determined that HB 3038 did not address all of the issues involved in the case. The parties worked together to seek agreement to resolve the matter still remaining before the Court.

III. Conclusion

The parties have worked together to develop a settlement agreement which each can support. The settlement agreement, draft revised final order and draft water right permit resolve the outstanding issues still before the Court. The Coos Bay North Bend Water Board has agreed with the proposed modifications to the water right permit. The draft revised final order and draft water right permit are modifications to an order previously approved by the Commission and permit issued by the Department.

IV. Alternatives

The Commission may consider the following alternatives:

1. Approval of the settlement agreement (as provided in Attachment 1) and issuance of a revised final order (as provided in Attachment 2) which is consistent with the settlement agreement, directing the Chair to sign for the Commission;
2. Reject the settlement agreement; or,
3. Reject the settlement agreement and direct staff to work with the parties to modify the draft revised final order.

V. Recommendation

Staff recommend adoption of Alternative 1, approval of the settlement agreement and issuance of a revised final order which is consistent with the settlement agreement, directing the Chair to sign for the Commission.

Attachments:

1. Settlement Agreement and Draft Water Right Permit
2. Draft Revised Final Order
3. Final Order of the Commission signed January 2001
4. Water Right Permit S-53710